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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

SECRETARY OF STATE OF MARYLAND,
Petitioner,

v.

JOSEPH H. MUNSON COMPANY, INC.,
Respondent.

ON WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF MARYLAND

REPLY BRIEF OF PETITIONER

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INTRODUCTION

Both Respondent Munson, a commercial fundraiser, and the amici on behalf of certain charitable organizations, urge that this Court's decision in *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980) accords the fundraising activities of such organizations constitutional immunity from state regulation. *Schaumburg* does not so hold; were it to be extended, the states would be rendered incapable of discharging their unique *parens patriae* responsibility for assuring the integrity and public service character of charitable organizations. The manner in which Maryland has chosen to discharge this

responsibility clearly offends no First Amendment rights of Munson and has not been shown to impinge upon the First Amendment rights of the Fraternal Order of Police or any other charitable organization. Specifically, as will be demonstrated within, the Maryland statute is neither substantially overbroad nor does it confer too much discretion on state officials in violation of the First Amendment.

I.

MARYLAND'S PERCENTAGE LIMITATION ON FUND-RAISING COSTS OF CHARITIES IS NOT SUBSTANTIALLY OVERBROAD.

Whether regarded as a question of standing[1] or as a "merits" determination of the permissible reach of a

[1] There is no dispute Munson has suffered and will suffer a distinct "injury in fact" (*i.e.*, economic loss if one of the charities with which it contracts is denied a waiver and so is unable to pay fundraising fees in excess of 25% of income and possible prosecution if it overcharges in the absence of an exemption), and so Munson has Article III standing to challenge the statute. Only a lack of Article III standing mandates dismissal of certiorari as improvidently granted. *See, e.g., Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464, 471-72 (1982). Amici's suggestion to the contrary is illfounded; the cases upon which they rely in fact demonstrate that when this Court has dismissed for lack of standing, it was because of lack of Article III, not prudential, standing. *See Princeton University v. Schmid*, 455 U.S. 100, 102-103 (1982); *Doremus v. Board of Education*, 342 U.S. 429, 434 (1952). Where, as here, there is sufficient "injury in fact" to confer Article III standing, this Court has routinely gone on to determine if there is sufficient overbreadth standing. *See, e.g., New York v. Ferber*, 102 S. Ct. 3348, 3360-63 (1982). This is clearly the correct result. Otherwise, the very lack of merit of a party's overbreadth standing will result in placing the erroneous constitutional analysis by the court below beyond the review of this Court; "only through this process of review [may the Court] correct erroneous applications of the Constitution that err on the side of an overly broad reading of our doctrines and precedents. . . ." *Id.*

statute,[2] the principal question to be decided in this case is: whether Article 41, § 103D of the Maryland Code is facially overbroad. Respondent Munson, a "professional fundraiser counsel" Maryland Code, Article 41, § 103A(g), asserts that it is. Accordingly, the firm urges this Court, without inquiry into the actual operation of the statute, to summarily condemn Maryland's effort to deal with the serious social problems created by charitable fundraising. In most areas of the law, claims such as those advanced here which are unsupported by a factual showing would not be entertained. Although this Court has recognized an exception to this salutary principle, where a statute is challenged as overbroad on First Amendment grounds, that exception is applicable only in the case of an egregious infringement on the right of free speech.[3] For

[2] Determinations as to overbreadth — both standing and merits challenges — involve precisely the same considerations. At the very least, "a party's standing to assert overbreadth should be dependent on the same factors which determine whether the challenged statute should be invalidated on its face or not." Note, *First Amendment Overbreadth Doctrine* 83 Harvard L. Rev. 844, 909 (1970). *See e.g., Broadrick v. Oklahoma*, 413 U.S. 601 (1973).

[3] The Court has also permitted such an exception "where individuals not parties to a particular suit stand to lose by its outcome and yet have no effective avenue of preserving their rights themselves." *Broadrick v. Oklahoma, supra*, 413 U.S. at 611. As demonstrated in the Brief of Petitioner at 21-23, Munson has no such "*jus tertii*" standing to assert the rights of the Fraternal Order of Police (FOP). First, the FOP is clearly capable of asserting its own rights. If the FOP was truly afraid of the publicity of litigation, it would not allow its name to be bandied about in the case at hand. Moreover, the mere existence of the challenged statute (with its waiver provision) does not "ensure" the rights of the FOP will be violated. Indeed, there is nothing in the record of this case which demonstrates that the FOP's speech or advocacy interests were in any way hurt by the challenged statute. All that the parties stipulated to was that the FOP was engaged in some advocacy and that it was "reluctant to enter into a fundraising contract with Munson in light of the statute." There is no stipulation with regard to the extent of the FOP's "reluctance" *or* the connection between its

example, this Court has expressly recognized that the overbreadth doctrine is "strong medicine" and so directed:

> "[W]here conduct and not merely speech is involved, we believe that the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep." *Broadrick v. Oklahoma*, 413 U.S. at 615.

However, Munson claims the *Broadrick* "substantial overbreadth" test was rejected by this Court in *Schaumburg*, and is not applicable here. Brief of Respondent at 21.

Munson is wrong on both counts. First, this Court, in *Schaumburg*, in fact applied the substantial overbreadth test, expressly recognizing that "[s]oliciting financial support is undoubtedly subject to reasonable regulation," 444 U.S. at 632, and so such a regulation will be struck down only if it "*substantially* abridges First Amendment rights of other parties not before the Court." 444 U.S. 634 (emphasis added). It was only because the *Schaumburg* ordinance was found to be such a "direct and substantial limitation on protected activity," that it was invalidated. 444 U.S. at 636. Moreover, while in *Schaumburg* and the other charitable solicitation case upon which Munson relies, *e.g., Hynes v. Mayor and Council of Borough of Oradell*, 425 U.S. 610 (1976), the condemned regulations were directed at door to door solicitation which is almost inevitably "intertwined with" the communication of information, the advocacy of causes, and/or the propagation of views and ideas, § 103D is not so directed.

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advocacy activities and the fundraising activities at which § 103D is directed. Thus, the State does not challenge the stipulation filed below, but only points up its enormous limitations. Finally, Munson can point to no case of this Court where a litigant was permitted to press a facial overbreadth claim on behalf of third parties solely on the basis of *jus tertii* standing. Even if Munson had "*jus tertii*" standing here, it would still have to demonstrate the overbreadth of § 103D in order to prevail.

Rather, the Maryland statute is directed at fundraising, pure and simple, and encompasses many types of conduct that are far removed from advocacy or the dissemination of ideas.[4] Thus, here it is clear both that Munson must prove substantial overbreadth and that this burden is more difficult than it was in *Schaumburg*.

In order to prove substantial overbreadth, Munson, at the very least,[5] must demonstrate that the statute "reaches a substantial number of impermissible applications." *New York v. Ferber*, *supra*, 102 S. Ct. at 3362.

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[4] *See, e.g.*, the allegations in Munson's Amended Complaint (Munson "engaged in the promotion business, providing advice to various organization clients desiring to promote entertainment events for profits; Munson's "sole contracts in . . . Maryland" are with the FOP; Munson's "activities are *limited to* advising its clients [the FOP] as to how to go about promoting a particular entertainment event") (A. 21). (References to the Appendix to the Petition for a Writ of Certiorari are cited as "APC" and references to the Joint Appendix as "A"). *Compare* the uncontroverted allegations in CBE's Amended Complaint in *Schaumburg* (CBE endeavored "to distribute literature on environmental topics and answer questions of an environmental nature when posed; solicit contributions to financially support the organization and its programs; receive grievances and complaints of an environmental nature," 444 U.S. at 625).

[5] It is not at all certain that a party such as Munson can ever demonstrate § 103D is substantially overbroad. Several authorities have suggested that in order "[to] challenge a statute as . . . overreaching, a litigant must still be one as to whom . . . it *may* overreach." Note, *The Void for Vagueness Doctrine in the Supreme Court*, 109 U. Pa. L. Rev. 67, 101 (1960) (emphasis added); Schutter, *The Invalidation of Statutes For Hypothetical Unconstitutionality: A Tale of Two Absurdities*, 7 Ariz. L. Rev. 252, 256 (1966) ("[T]hose complaining of the overbreadth . . . were the same ones who were at least hypothetically threatened. . . .") If that test is applied here, it is clear without further analysis that the Maryland statute is not overbroad as to Munson. For, unlike the Citizens for Better Environment in *Schaumburg*, which, although it did not *prove* that it was unconstitutionally infringed by the statute, was theoretically a group which *might* have been harmed by the statute, Munson, a professional fund-raiser, is not even theoretically a group whose speech *might* be harmed by the Maryland statute.

Munson's principal attempt to meet this burden is to urge this Court to simply find the group identified as burdened in *Schaumburg* also burdened here. This argument totally ignores: (1) the critical differences between the *Schaumburg* ordinance and § 103D and (2) the record in this case.

The "class" of organizations which the *Schaumburg* Court identified as unconstitutionally burdened by the Village ordinance were charitable organizations "whose primary purpose" was "not to provide dollars or services for the poor . . . but to gather and disseminate information about and advocate positions on matters of public concern." 444 U.S. at 635. Munson asserts that "[e]ssentially" this class is also unconstitutionally burdened by § 103D. Brief of Respondent at 23. However, this Court in *Schaumburg* did not find this "class" of advocacy organizations burdened by the challenged ordinance because their fundraising expenses were unduly limited. In fact, the fundraising expenses of the Citizens for a Better Environment were not higher than permitted by the ordinance; it actually spent *less* than 25% of its income on fundraising expenses and so if fundraising expenses alone had been subject to limitation, as they are here, the Citizens would have had no difficulty complying with the ordinance. Indeed, as to pure fundraising expenses, the *Schaumburg* Court specifically noted the "75 percent limitation" in the ordinance might be enforceable "where solicitors" were "mere conduits for contributions. . . ." 444 U.S. at 635.

Rather, the *Schaumburg* Court's attention was primarily focused on the inflexible limitation the ordinance placed on "salaries and administrative expenses" of advocacy groups. 444 U.S. at 635 and 636. As the Court explained, although advocacy groups "might pay only reasonable salaries" they "would necessarily spend more of their budget on salaries and administrative expenses,"

to pay "staff to carry out" the organization's "research, advocacy or public education" functions "as well as to solicit financial support." 444 U.S. at 635-37. Of course, under § 103D there is no limitation on the amount of administrative expenses an advocacy organization, or any other charitable organization, may incur; it is only a charitable organization's fundraising expenses that are limited — and even then feasibility or planning studies are excluded from the limitation. The findings of the *Schaumburg* Court as to the particular burden on advocacy groups caused by limitations on their administrative expenses thus have no application in the case at hand. Perhaps recognizing this, Munson briefly attempts to expand the allegedly burdened class and to describe it to include those advocacy groups who espouse unpopular causes and because of this, must "logically" have particularly high fundraising costs. Brief of Respondent at 23. But there is no finding by the court below that this was so, nor is there anything in the record which supports this assertion. Thus, Munson simply has not demonstrated that Maryland's percentage limitation on fundraising activities "reaches" the class of advocacy organizations described in *Schaumburg* or any other group.

However, even if Munson were able to show that an identifiable "class" of charitable organizations did necessarily incur fundraising expenses in excess of 25%, this would not be sufficient to prove that § 103D "could not constitutionally be applied" to this class. *Village of Schaumburg v. Citizens for Better Environment, supra* at 635. This is because any charitable organization, including an advocacy group, may ask the Secretary of State for a waiver[6] from the 25% limitation. The Secretary will

[6] Contrary to Munson's assertions, the court below did not authoritatively construe this waiver provision as so extremely narrow as to be inflexible. All that the Maryland Court did was *characterize* as extremely narrow the statutory language

grant a waiver if it is demonstrated that an exemption is "necessary to the accomplishment of the organization's charitable purpose" and that "there is no other reasonable alternative." COMAR 01.02.04.05B. The record of applications for waivers clearly demonstratres that these standards have been adequate to provide the Maryland fundraising limitation with the flexibility which this Court specifically found wanting in the *Schaumburg* statute. To wit, the waiver regulations allow an organization unable to meet the percentage limitation an opportunity to demonstrate that its fundraising costs are nonetheless necessary.[7] Indeed, The Report of Secretary of State of Maryland lists only 14 organizations that found it necessary to apply for a waiver of the 25% fundraising limitation; all but one, the Howard County Firefighters Lodge 2000, were granted the waiver. (The Firefighters

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authorizing the Secretary of State to promulgate exemption regulations. APC. at 20-21. By such a characterization, the lower court cannot compel "an overbreadth attack when not required to do so by the Constitution." *New York v. Ferber, supra*, 102 S. Ct. at 3360. Moreover, the statutory language authorizing regulations speaks for itself:

> The Secretary of State shall issue rules and regulations to permit a charitable organization to pay or agree to pay for expenses in connection with a fund-raising activity more than 25% of its total gross income in those instances where the 25% limitation would effectively prevent the charitable organization from raising contributions. [Art. 41, § 103D(a).]

Of course, any regulations promulgated under this authority are limited in that they may only pertain to "those instances where the 25% limitation would effectively prevent the charitable organization from raising contributions." However, as demonstrated in text, the regulations that have been promulgated are both within the statutory authorization and adequate to provide the flexibility missing in *Schaumburg*.

[7] Since a charity can choose the period in which a precentage limitation is in effect and apply it retrospectively on an annual or on a campaign-by-campaign basis, COMAR 01.02.04.05A, the Maryland law also allows the charity an opportunity to alter its spending patterns from year to year as the *Schaumburg* ordinance did not.

Lodge never submitted the requested additional information to the Secretary.) Significantly, every waiver sought by lodges of Fraternal Order of Police has been granted; and none of the well known charities represented by the amici have even found it necessary to apply for a waiver. *See* Brief of Petitioner, Exhibit B. Surely, if the limitation or waiver provisions had caused the slightest inconvenience, that inconvenience would have been dramatized by the briefs presented to this Court.

Munson, however, maintains that the waiver provision does not effect the alleged overbreadth of § 103D because it is not related to "the nature of the organization or to the type of activity it engages in. . . ." Brief of Respondent at 25. Munson is correct that the waiver provision in § 103D has "no relation" or at least no direct relation to the "advocacy nature of an organization;" if it did, it well might be constitutionally suspect. What the waiver provision in § 103D relates to is what § 103D itself regulates — the fundraising expenses of charitable organizations. However, Munson is incorrect in maintaining that the waiver provision has no effect on the alleged overbreadth of § 103D. If, as Munson argues, advocacy groups in general, and particularly those espousing unpopular causes, truly do have the most difficulty raising funds, then the waiver provision is indeed particularly helpful to them. For such groups will be those most easily able to demonstrate that the 25% limitation "effectively prevents" them "from raising contributions," and so obtain an exemption from it.

Thus, while in *Schaumburg*, there was an entire class of charities to whom the statute "could not constitutionally be applied," that is, as demonstrated above, simply not the case here. Rather, the situation here is similar to that in *New York v. Ferber, supra*, where, this Court, while recognizing that the challenged state statute might arguably have impermissible applications, found them to

be no more than "a tiny fraction of the materials within the statute's reach." 102 S. Ct. at 3363. We submit that the record of the case similarly demonstrates that if § 103D has impermissible applications, (none have been demonstrated and we do not concede that there are any), they are but a "tiny fraction" of the total number of organizations within the statute's reach.[8]

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[8] Munson concedes that "there is no doubt that the interests asserted by the State . . . are sufficiently strong," but claims the "real issue" is whether the Maryland statute furthers those interests "substantially" so as to justify the alleged "great burden on First Amendment rights." Brief of Respondent at 37, n. 13. As demonstrated in the text above, the burden on First Amendment rights here, if it exists, is hardly "great." In such a case, this Court has recognized that even though there may be another approach that properly accommodates [the State's] interest, it does not follow that the First Amendment prohibits the State from going further" to protect its interests. *New York v. Ferber, supra*, 102 S. Ct. 3356. *See also Buckley v. Valeo*, 424 U.S. 27-29 (1976) (limitation on individual political contributions upheld even though fraud was also addressed by disclosure requirements). Moreover, it is in any event clear that § 103D does "substantially" further the State's interest in preventing fraud and seeing that charities are properly administered in two ways: (1) by protecting charitable donors and beneficiaries by insuring that a reasonable proportion of donor's contributions actually reach their intended beneficial objects and (2) by protecting the charities themselves by promoting the public's perception of integrity and efficiency with which charitable funds are raised. The ACLU errs in contending that the State's *parens patriae* power to see that charities are properly administered, *see Girard v. City of Philadelphia*, 74 U.S. (7 Wall.) 1, 14-15 (1869), is limited to "traditional charities," *i.e.*, "institutions to help the poor, sick and aged," ACLU Brief at 16. Not even the Statute of Charitable Uses was so limited; it also applied to "schools of learning, . . . scholars in universities; . . . [and] help of young tradesmen. . . ." Preamble, 43 Elizabeth, ch. 4 (1601). Moreover, in Maryland, the Statute of Charitable Uses, adopted in principle by Estates & Trust Article § 14-301(a) and (b), has been recognized as potentially justifying suits by the Attorney General to enforce the terms of charitable trusts designed to benefit the *public generally*. *See Gordon v. Mayor of Baltimore*, 258 Md. 682, 712, 267 A.2d 98, 114 (1970) (trust to establish

Furthermore, there are a number of other reasons why Munson cannot show real and substantial overbreadth in § 103D and why whatever overbreadth is alleged to exist is readily cured through case-by-case analysis of individual fact situations. *See Broadrick v. Oklahoma, supra*, 413 U.S. at 615-16. First, the statute itself contains a device to facilitate case-by-case analysis of a charity's assertions of overbreadth. An organization can easily apply for an exception to the 25 percent limitation. If such an exception were to be rejected, a charity would have the right of judicial review. Maryland Code, Article 41, Section 255. Second, § 103D imposes no prior restraint and permits a charity exceeding the percentage limitation to apply for an exception after-the-fact. These factors are particularly relevant because overbreadth scrutiny is less rigid when a court is dealing with a "noncensorial" statute, *Broadrick v. Oklahoma*, 413 U.S. 601, 614 (1973), and because in determining "substantial overbreadth," the penalty to be impoed by the statute is relevant. *New York v. Ferber, supra*, 102 S. Ct. at 3363 (1982). Third, the record does not identify a single "cause" alleged to be advocated by Munson's clients, or whether the firm's solicitations have ever mentioned such issues.[9] Nor does it disclose whether Munson's clients funded these asserted advocacy activities by such exempted items as membership dues.

In short, the Maryland statute that is challenged here predominantly impacts constitutionally unprotected conduct rather than free speech and has not been shown to

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cultural institute); *Mayor of Baltimore v. Peabody Institute*, 175 Md. 186, 192, 200 A. 375, 378 (1938) (trust to establish public park).

[9] The Attachment to this Brief contains a recent mail solicitation for the Maryland State Lodge of the Fraternal Order of Police that avoids mentioning any of the activities, advocacy or otherwise, of the organization. ("Should you have any questions concerning our organization, its policies or activities, I would be happy to answer them. . . .")

have any impermissible applications that offend the First Amendment. Accordingly, it should not be invalidated as overbroad.

II.

THE WAIVER PROVISION DOES NOT VEST EXCESSIVE DISCRETION IN THE SECRETARY OR OTHERWISE VIOLATE THE FIRST AMENDMENT.

The waiver provision in § 103D provides:

> "The Secretary of State shall issue rules and regulations to permit a charitable organization to pay or agree to pay for expenses in connection with a fundraising activity more than 25% of its total gross income in those instances where the 25% limitation would effectively prevent the charitable organization from raising contributions."

After arguing at some length that this provision is "narrow", "very narrow" and "very limited and strictly defined," Brief of Respondent at 25, 26, 28, 29 and 38, Munson attempts to argue "alternatively" that it places "excessive" and "unguided discretion" in the hands of the Secretary and for this reason violates the First Amendment. Brief of Respondent at 42-43.[10]

[10] Munson maintains that this argument has been made at each stage of the proceedings below. In fact, neither the Bill of Complaint nor the Amended Bill of Complaint alleged that the waiver provisions of § 103D violated the First Amendment as conferring too much discretion on State officials. They challenged this feature of the law only as "an improper delegation of legislative authority," — a separation of powers, *see Yakus v. United States*, 321 U.S. 414 (1944), or due process claim, *Tighe v. Osborne*, 149 Md. 349, 131 A. 801 (1925), not a First Amendment contention (A. 24-26). In a post-trial memorandum, filed July 1, 1980, Munson did say in a First Amendment context: "What is more, we urged and we urge that even if the Maryland exception is to be read more broadly than we think permissible, that such regulation is overbroad and an improper placement of discretion in the issuance of exceptions." Plaintiff's Memorandum of Law at 10. This belated argument was ignored by the trial court whose opinion issued the following day.

It must be noted at the outset that this is a peculiar, if not impossible, claim for Munson to make. Section 103D provides only that the Secretary of State shall issue rules permitting "a charitable organization" to pay fundraising expenses in excess of 25%. Munson is not a charitable organization; it can never apply for the waiver. Nor can Munson legitimately assert the claims of the FOP. *See* n.3 *supra*. For these reasons, the State submits that Munson's excessive discretion claim[11] can and should be summarily rejected.

This claim is, in any event, meritless. The discretion given the Secretary under § 103D is very different in both degree and kind from that condemned in the cases relied upon by Munson. First, § 103D provides a clear standard permitting the Secretary to exercise her discretion to grant a waiver from the 25% of fundraising expense limitation only "in those instances where the 25% limitation would effectively prevent the charitable organization from raising contributions." Moreover, here, in

[11] Munson repeatedly maintains that the waiver provision in § 103D is impermissibly "vague." Clearly, the Respondent made no "fair notice" argument below and does not make one here. *See Zwickler v. Koota*, 389 U.S. 241, 249 (1967) (A statute is void for vagueness "which either forbids or requires the doing of an act in terms so vague that men of common intelligence must guess at its meaning and differ as to its application. . . .") Rather, the firm argues that § 103D is vague because it vests "excessive" discretion in State officials. In the First Amendment context, this has been sometimes characterized as overbreadth, *see Broadrick v. Oklahoma, supra* 413 U.S. at 613, (Facial overbreadth claims have been entertained where communicative conduct "has required official approval under laws that delegated standardless discretionary power to local functionaries . . ."); and other times as vagueness, *see Hynes v. Mayor and Council of Borough of Oradell, supra*, 425 U.S. at 622, (An ordinance was struck down as vague in part because it did not "'provide explicit standards for those who apply' it.") However, no matter what label is placed on Munson's assertions of "too much discretion," for reasons detailed above, it is clear that the argument is utterly without merit.

contrast to those cases where the court has found excessive discretion, "the agency charged with enforcement," the Secretary of State, has "adopted . . . regulations that . . . give more precise meaning" to the statute. *Cf. Hynes v. Mayor and Council of Borough of Oradell, supra*, 425 U.S. at 623-24, n.6.[12] Pursuant to these regulations, the Secretary is confined to determining that the 25% limitation effectively prevents the organization from raising contributions in those instances when it is demonstrated that an exemption is "necessary to the accomplishment of the organization's charitable purpose" and that "there is no other reasonable alternative." COMAR 01.02.04.05B.[13]

In addition, the statute and regulations promulgated pursuant to it do not authorize scrutiny of an organizatin's charitable purpose, but instead require a neutral assessment of whether fundraising expenses in excess of 25% limitation are "necessary" to its accomplishment, and whether "reasonable alternatives," compatible with that purpose, do or do not exist. Thus, the Secretary is not given "the undefined power to determine what messages residents will hear." *Hynes v. Mayor and Council of Borough of Oradell, supra*, 425 U.S. at 617. Indeed, the statute and regulations do not give the Secretary any discretionary authority in most instances; a charitable organization has an absolute right to solicit for funds as long as its fundraising costs are 25% or less of its total income. It is only when this limit is exceeded that the Secretary exercises any discretion at all.

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[12] The statute also has a history of "less formalized custom and usage," *Parker v. Levy*, 417 U.S. 733, 754 (1974) which further defines the discretion granted the Secretary. *See* Brief of Petitioner, Exhibit A, Report of the Secretary of State at 6.

[13] Moreover, the Secretary's determination as to whether to grant or deny a waiver is subject to judicial review. Maryland Code, Article 41 § 255.

Moreover, the Secretary is not permitted to use even her limited discretion to impose a prior restraint on fundraising. A charity need not request the waiver *prior* to incurring fundraising expenses in excess of 25% of its income; rather it may incur the excessive expenses and then request an exemption retrospectively. COMAR 01.02.04.05A and 01.02.04.05B(3). Indeed, a charity that has spent more than 25% on fundraising expenses need not even obtain a waiver prior to engaging in further fundraising, it simply must have *requested* one. COMAR 01.02.04.05B(3). In contrast, the excessive discretion cases upon which Munson relies all involve some sort of prior restraint, which this Court focused upon and specifically disapproved. *See Hynes v. Mayor and Council of Borough of Oradell, supra*, 425 U.S. at 622 ("To the extent that these ambiguities and the failure to explain what 'identification' is required give police the *effective* power to grant or deny permission to canvass for political causes, the ordinance suffers in its practical effect from the vice condemned in *Lovell, Schneider, Cantwell,* and *Staub.*"); *Cantwell v. Connecticut*, 310 U.S. 296, 306 (1940) ("[T]he availability of a judicial remedy for abuses in the system of licensing still leaves that system one of previous restraint which, in the field of free speech and press, we have held inadmissible."); *Schneider v. State*, 308 U.S. 147, 164 (1939) ("[A] municipality cannot . . . require all who wish to disseminate ideas to present them first to police authorities for their consideration and approval. . . ."); *Lovell v. Griffin*, 303 U.S. 444, 451-52 (1938) ("While this freedom from previous restraint upon publication cannot be regarded as exhausting the guaranty of liberty, the prevention of that restraint was a leading purpose in the adoption of the constitutional provision.")[14]

[14] Two additional cases cited in this section of Munson's brief dealt not with excessive discretion but with statutory vagueness. *See N.A.A.C.P. v. Button*, 371 U.S. 415, 435-36 (1963); *Thornhill v. Alabama*, 310 U.S. 88, 97-98 (1940).

Finally, any interested party, who is confused or uncertain as to the scope or meaning of any of the rules promulgated by the Secretary may, under Maryland law, request a declaratory ruling from the Secretary. Maryland Code Article 41, § 250; COMAR 01.02.03.04; 01.02.04.07. Indeed, such a party may petition the Secretary to promulgate, amend, or repeal any rule. Maryland Code, Article 41 § 248; COMAR 01.02.03.03. A party is entitled to a hearing before the Secretary complete with notice and legal representative on any of these matters. Thus, as in *United States Civil Service Commission v. National Association of Letter Carriers*, 413 U.S. 548, 580 (1973), a procedure has been established by which an interested person "in doubt about the validity of a proposed course of conduct may seek and obtain advice from the [Secretary] and thereby remove any doubt there may be as to the meaning of the law, at least insofar as the [Secretary] is concerned."

Accordingly, we submit that it is as clear here as it was in *Broadrick v. Oklahoma*, *supra*, 413 U.S. at 607, that "it is all but frivolous to suggest that [the statute] fails to . . . set out 'explicit standards' for those who must apply it."

CONCLUSION

For all of the reasons set forth within and in the Brief of Petitioner, the decision of the Court of Appeals of Maryland should be reversed and remanded for entry of a declaration that Section 103D of Article 41 of the Maryland Code is not substantially overbroad in violation of the First Amendment.

Respectfully submitted,

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